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Carrie Couser

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

**CARRIE COUSER, Individually
and On Behalf of All Others
Similarly Situated,**

Plaintiff,

v.

**EVEREST COLLEGE
PHOENIX, INC.; and,
CORINTHIAN COLLEGES,
INC.,**

Defendants.

Case No.: '13CV1591 JM WVG

CLASS ACTION

**COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF
PURSUANT TO THE TELEPHONE
CONSUMER PROTECTION ACT,
47 U.S.C. § 227 ET SEQ.**

JURY TRIAL DEMANDED

INTRODUCTION

1. CARRIE COUSER (“Plaintiff”), individually, and on behalf of all others similarly situated, brings this Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of EVEREST COLLEGE PHOENIX, INC. (“EVEREST” or collectively as “Defendants”), and CORINTHIAN COLLEGES, INC. (“CORINTHIAN” or collectively as “Defendants”), in negligently and/or intentionally contacting Plaintiff on Plaintiff’s cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (“TCPA”), thereby invading Plaintiff’s privacy. Plaintiff alleges as follows upon personal knowledge as to herself and her own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by her attorneys.
2. Plaintiff is informed and believes that at all relevant times, each and every Defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course and scope of said agency and/or employment with the full knowledge and consent of each of the other Defendants. Plaintiff is informed and believes that each of the acts and/or omissions complained of herein was made known to, and ratified by, each of the other Defendants.
3. The TCPA was designed to prevent calls like the ones described within this complaint, and to protect the privacy of citizens like Plaintiff. “Voluminous consumer complaints about abuses of telephone technology – for example, computerized calls dispatched to private homes – prompted Congress to pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).
4. In enacting the TCPA, Congress intended to give consumers a choice as to how creditors and telemarketers may call them, and made specific findings that “[t]echnologies that might allow consumers to avoid receiving such

calls are not universally available, are costly, are unlikely to be enforced, or place an inordinate burden on the consumer.” TCPA, Pub.L. No. 102–243, § 11. Toward this end, Congress found that:

[b]anning such automated or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call or when such calls are necessary in an emergency situation affecting the health and safety of the consumer, is the only effective means of protecting telephone consumers from this nuisance and privacy invasion.

Id. at § 12; *see also Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL 3292838, at* 4 (N.D. Ill. Aug. 10, 2012) (citing Congressional findings on TCPA’s purpose).

5. Congress also specifically found that “the evidence presented to the Congress indicates that automated or prerecorded calls are a nuisance and an invasion of privacy, regardless of the type of call....” *Id.* at §§ 12-13. *See also, Mims*, 132 S. Ct. at 744.
6. As Judge Easterbrook of the Seventh Circuit recently explained in a TCPA case regarding calls to a non-debtor similar to this one:

The Telephone Consumer Protection Act ... is well known for its provisions limiting junk-fax transmissions. A less-litigated part of the Act curtails the use of automated dialers and prerecorded messages to cell phones, whose subscribers often are billed by the minute as soon as the call is answered—and routing a call to voicemail counts as answering the call. An automated call to a landline phone can be an annoyance; an automated call to a cell phone adds expense to annoyance.

Soppet v. Enhanced Recovery Co., LLC, 679 F.3d 637, 638 (7th Cir. 2012).

7. The Ninth Circuit recently affirmed certification of a TCPA class action similar to this one in *Meyer v. Portfolio Recovery Associates, LLC*, __ F.3d __, 2012 WL 4840814 (9th Cir. Oct. 12, 2012).

JURISDICTION AND VENUE

8. This Court has federal question jurisdiction because this case arises out of violation of federal law. 47 U.S.C. § 227(b); *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740 (2012).

9. Venue is proper in the United States District Court for the Southern District of California pursuant to 18 U.S.C. § 1391(b) because Defendant is subject to personal jurisdiction in the County of San Diego, State of California because it conducts business there.

PARTIES

10. Plaintiff is, and at all times mentioned herein was, a citizen and resident of State of California. Plaintiff is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153 (39).

11. Plaintiff is informed and believes, and thereon alleges, that EVEREST is, and at all times mentioned herein was, a corporation located in Santa Ana, California, and licensed under the laws of the State of Arizona. EVEREST provides an online degree program.

12. Plaintiff is informed and believes, and thereon alleges, that CORINTHIAN is, and at all times mentioned herein was, a corporation located in Santa Ana, California, and licensed under the laws of the State of Delaware. CORINTHIAN is a post-secondary company that offers short-term diploma programs and degrees through over 100 campuses in North America. EVEREST is one of CORINTHIAN’s campuses.

13. At all times relevant, EVEREST conducted business in the State of California and in the County of San Diego, within this judicial district.

14. At all times relevant, CORINTHIAN conducted business in the State of California and in the County of San Diego, within this judicial district.

15. Defendants are, and at all times mentioned herein were, a corporation and a “person,” as defined by 47 U.S.C. § 153 (39).

FACTUAL ALLEGATIONS

16. On or about May 29, 2013 at approximately 6:20 p.m. PST, Defendants contacted Plaintiff on Plaintiff's cellular telephone number ending in 4164 via an "automatic telephone dialing system" ("ATDS"), as defined by 47 U.S.C. § 227(a)(1), as prohibited by 47 U.S.C. § 227(b)(1)(A).

17. This ATDS has the capacity to store or produce telephone numbers to be called, using a random or sequential number generator.

18. On or about May 30, 2013 at approximately 3:10 p.m. PST, Defendants again contacted Plaintiff on Plaintiff's cellular telephone number via an ATDS.

19. Defendants used their telephone number (813) 630-8000 to place these unsolicited automated calls to Plaintiff's cellular telephone number ending in 4164.

20. Plaintiff did not provide her telephone number ending in 4164 to either Defendant.

21. Defendants obtain Plaintiff's telephone number ending in 4164 by unknown means.

22. Plaintiff does not attend a college owned or operated by CORINTHIAN, including EVEREST.

23. The telephone number Defendants called was assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

24. These telephone calls constituted calls that were not for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).

25. Plaintiff did not provide Defendants or their agent(s) prior express consent to place these calls to Plaintiff's cellular telephone, via an ATDS, pursuant to 47 U.S.C. § 227 (b)(1)(A).

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1 26.The telephone call by Defendants, or their agent(s), violated 47 U.S.C. §
2 227(b)(1).

3 **CLASS ACTION ALLEGATIONS**

4 27.Plaintiff brings this action on behalf of herself and on behalf of all others
5 similarly situated (the “Class”).

6 28.Plaintiff represents, and is a member of the Class, consisting of:

7 All persons within the United States who received any
8 telephone call/s from Defendants or their agent/s and/or
9 employee/s to said person’s cellular telephone made
10 through the use of any automatic telephone dialing
11 system within the four years prior to the filing of the
Complaint.

12 29.Defendants and its employees or agents are excluded from the Class.
13 Plaintiff does not know the number of members in the Class, but believes the
14 Class members number in the several thousands, if not more. Thus, this
15 matter should be certified as a Class action to assist in the expeditious
16 litigation of this matter.

17 30.Plaintiff and members of the Class were harmed by the acts of Defendants in
18 at least the following ways: Defendants, either directly or through their
19 agents, illegally contacted Plaintiff and the Class members via their cellular
20 telephones by using an ATDS, thereby causing Plaintiff and the Class
21 members to incur certain cellular telephone charges or reduce cellular
22 telephone time for which Plaintiff and the Class members previously paid,
23 and invading the privacy of said Plaintiff and the Class members. Plaintiff
24 and the Class members were damaged thereby.

25 31.This suit seeks only damages and injunctive relief for recovery of economic
26 injury on behalf of the Class, and it expressly is not intended to request any
27 recovery for personal injury and claims related thereto. Plaintiff reserves the
28 right to modify or expand the Class definition to seek recovery on behalf of

1 additional persons as warranted as facts are learned in further investigation
2 and discovery.

3 32. The joinder of the Class members is impractical and the disposition of their
4 claims in the Class action will provide substantial benefits both to the parties
5 and to the court. The Class can be identified through Defendants' records
6 and/or Defendants' agents' records.

7 33. There is a well-defined community of interest in the questions of law and
8 fact involved affecting the parties to be represented. The questions of law
9 and fact to the Class predominate over questions which may affect
10 individual Class members, and include but are not necessarily limited to the
11 following:

- 12 a) Whether, within the four years prior to the filing of the Complaint,
13 Defendants or its agents sent any unsolicited telephone call to the
14 Class (other than a message made for emergency purposes or made
15 with the prior express consent of the called party) using any automatic
16 dialing system to any telephone number assigned to a cellular
17 telephone service;
- 18 b) Whether Plaintiff and the Class members were damaged thereby, and
19 the extent of damages for such violation; and
- 20 c) Whether Defendants and its agents should be enjoined from engaging
21 in such conduct in the future.

22 34. As a person who received at least one unsolicited telephone call utilizing an
23 ATDS without Plaintiff's prior express consent, Plaintiff is asserting claims
24 that are typical of the Class. Plaintiff will fairly and adequately represent and
25 protect the interests of the Class in that Plaintiff has no interests antagonistic
26 to any member of the Class.

27 35. Plaintiff and the members of the Class have all suffered irreparable harm as
28 a result of the Defendants' unlawful and wrongful conduct. Absent a class

1 action, the Class will continue to face the potential for irreparable harm. In
2 addition, these violations of law will be allowed to proceed without remedy
3 and Defendants will likely continue such illegal conduct. Because of the
4 size of the individual Class member's claims, few, if any, Class members
5 could afford to seek legal redress for the wrongs complained of herein.

6 36.Plaintiff has retained counsel experienced in handling class action claims
7 and claims involving violations of the Telephone Consumer Protection Act.

8 37.A class action is a superior method for the fair and efficient adjudication of
9 this controversy. Class-wide damages are essential to induce Defendants to
10 comply with federal law. The interest of Class members in individually
11 controlling the prosecution of separate claims against Defendants is small
12 because the maximum statutory damages in an individual action for
13 violation of privacy are minimal. Management of these claims is likely to
14 present significantly fewer difficulties than those presented in many class
15 claims.

16 38.Defendants have acted on grounds generally applicable to the Class, thereby
17 making appropriate final injunctive relief and corresponding declaratory
18 relief with respect to the Class as a whole.

19 **FIRST CAUSE OF ACTION**

20 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**

21 **47 U.S.C. § 227 ET SEQ.**

22 39.Plaintiff incorporates by reference all of the above paragraphs of this
23 Complaint as though fully stated herein.

24 40.The foregoing acts and omissions of Defendants constitute numerous and
25 multiple negligent violations of the TCPA, including but not limited to each
26 and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

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41. As a result of Defendants' negligent violations of 47 U.S.C. § 227 et seq., Plaintiff and the Class are entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

42. Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

KNOWING AND/OR WILLFUL VIOLATIONS OF THE

TELEPHONE CONSUMER PROTECTION ACT

47 U.S.C. § 227 ET SEQ.

43. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

44. The foregoing acts and omissions of Defendants constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

45. As a result of Defendants' knowing and/or willful violations of 47 U.S.C. § 227 et seq., Plaintiff and the Class are entitled to an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

46. Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and the Class members the following relief against Defendants:

FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF

THE TCPA, 47 U.S.C. § 227 ET SEQ.

- As a result of Defendants' negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each Class member \$500.00 in statutory

damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

**SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL VIOLATIONS OF
THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- As a result of Defendants' knowing and/or willful violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each Class member \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

TRIAL BY JURY

47. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: July 8, 2013

Respectfully submitted,

KAZEROUNI LAW GROUP, APC

By: /s/ Abbas Kazerounian, Esq.
ABBAS KAZEROUNIAN
ATTORNEY FOR PLAINTIFF

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